No. 96-372

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1996

THOMAS A. COUGHLIN, III, as Commissioner of N.Y.S. Department of Correctional Services, and LOUIS F. MANN, as Superintendent of Shawangunk Correctional Facility,

Petitioners,

against

DAVID GRIFFIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

REPLY BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

DENNIS C. VACCO
Attorney General of the State of New York
The Capitol
Albany, NY 12224
(518) 474-3654

BARBARA G. BILLET
Solicitor General and
Counsel of Record

PETER H. SCHIFF
Deputy Solicitor General

JULIE S. MERESON
Assistant Attorney General

Of Counsel

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THE REPORTER CO., INC.- Walton, NY 13856 - 800-252-7181
Syracuse Office, University Building, Syracuse, NY 13202 - 315-426-1235
NYC Office - 30 Vesey St., New York, NY 10007 - 212-732-6978 - 800-800-4264
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The petitioners reply to two points raised by respondent in his brief in opposition to our petition. The petitioners first wish to clarify the issue for which we seek review by this Court. In a second point, petitioners dispute the respondent's premise that the resolution of the question presented in our petition is controlled by the literature first published by Alcoholics Anonymous during its formative years.

ARGUMENT

The brunt of respondent's brief in opposition to our petition addresses the Alcohol and Substance Abuse Treatment (ASAT) program as operated by the Department of Correctional Services (DOCS). Respondent attaches an appendix consisting of parts of the ASAT manual, including the curriculum, which is currently undergoing a revision. We amplify here what we have said in footnote 2 on page 3 of our petition, that we are not asking this Court to review the ASAT curriculum or the ASAT program as it existed at the time it was before the New York Court of Appeals. Rather than "rewrit[ing] the decision below as though it only pertains to ASAT's requiring inmates to participate in AA self-help groups" (Resp's br at 16, n.5), we have narrowed the issue upon which we seek certiorari to the portion of the decision declaring that a State may not, under the Establishment Clause, refer inmates to self-help groups that use the 12-step method as part of its substance abuse treatment program. In other words, we are not challenging that portion of the decision below which disapproved of the ASAT curriculum itself.

The second and final point is that respondent errs in basing his argument that the State has violated his rights under the Establishment Clause solely on the literature first published by AA during its formative years in the 1930s through the 1950s.[1] What he and the New York Court of Appeals have failed to

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[1] *Alcoholics Anonymous*, Alcoholics Anonymous World Services, Inc. (3d ed 1976) was first published in 1939 and *Twelve Steps and Twelve Traditions*, Alcoholics Anonymous World Services, Inc., (13th ed 1983) in 1952. Subsequent editions of *Alcoholics Anonymous* have been published, but the portion describing the 12-step program has been left intact. While there have been many printings of *Twelve Steps and Twelve Traditions*, it does not appear to have been revised.

acknowledge is that the 12 steps have been modernized over the last 40 to 60 years and are now subject to a much broader, and in some cases, more secular interpretation. The theistic language quoted by the respondent in his brief is from the central texts of AA. Yet, those passages no longer present an exclusive interpretation of the 12 steps.

For example, in Nakken, J., "Keep it Simple—Step 2," a publication distributed by Hazelden for the Bronx Municipal Hospital Center Comprehensive Alcoholism Treatment Center, Outpatient Department (attached to our petition for certiorari at 133a *et seq.*), step two is described as follows:

> Step Two turns off some of us because it sounds religious. We may be afraid the A.A. program says we have to believe in God. We may not believe in God.
>
> * * *
>
> Perhaps we have spiritual beliefs or no beliefs at all, and we don't want to be brainwashed.
>
> Relax. You don't have to believe in God, Buddha, or the Great Spirit. Step Two suggests we find something to believe in that can help us recover. (139a).

The publication then asks questions designed to enable the individual to find a "higher power." It says nothing about a god or any other religious concept. Rather, it suggests finding "someone who knows what needs to be done and how to do it and cares about us enough to put a lot of work into us." (142a).

> We want a Higher Power who knows all about chemical dependency and recovery. We want a Higher Power who

> knows as much as possible about us. This is what we mean by a Power who is *Higher.* When it comes to what we need, we are going to the expert.
>
> * * *
>
> We can probably think of a number of persons or things that fit on the list above. Maybe one of them is the right Higher Power for us, or even more than one.

(142a-143a).

Even the ASAT curriculum contained in the manual attached to respondent's brief in opposition, while no longer directly in issue, is an example of how the 12 steps could work in a secular fashion with the deletion primarily of the step headings. For instance, the ASAT curriculum outline for step 11 lists its goal under this step as, "[t]o assist in understanding the relationship between disease and its effects on the next generation. Viewing parenting in terms of recovery behavior." The topics covered include role modeling —breaking the addiction cycle, what children need, discipline/consistency, nutrition and Fetal Alcohol Syndrome. (Respondent's appendix at 20a).

Therefore, reliance only on the original AA texts is misleading and results in the sweeping indictment of an effective substance treatment tool as a religious exercise, without regard to its purpose, its modern application and its sensitivity to an individual's freedom of belief or non-belief and, in this case, without consideration of the particular 12-step meetings which a prisoner might be asked to attend.

Conclusion

For the reasons stated in this brief and in our Petition for a Writ of Certiorari, the Petition should be granted.

Dated: Albany, New York
December 5, 1996

DENNIS C. VACCO
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State of New York

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